

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

50980

FILE: B-183500

DATE: August 15, 1975

MATTER OF: H & S Corporation

97486

DIGEST:

Protest filed here more than 5 days after receipt of notice of adverse agency action, is untimely, under 4 CFR 20.2(a) (1974), notwithstanding that delay in filing protest was due to the efforts to obtain corroborating information from other bidders present at bid opening.

H & S Corporation (H & S), the second low bidder, protests the award of a contract to Piland Construction Company, Inc. (Piland), the low bidder, under Invitation for Bids No. DACA65-75-B-0016 for latrine and exit modernization at Fort Monroe, Virginia, issued by the Norfolk District, U. S. Army Corps of Engineers.

The invitation scheduled bid opening for 2:00 p.m., January 16, 1975, on the first floor of Building No. 4. However, without an amendment to the solicitation, the bid opening room was changed to the Cafeteria on the first floor of Building No. 3, located directly across the sidewalk from Building No. 4. Signs were posted to indicate the change.

H & S alleges that Piland's hand delivered bid was submitted 20 seconds late and that its bid was presented to the Government in an unsealed envelope.

The Army in its report dated May 12, 1975, alleges that H & S' protest is untimely and not for consideration on its merits. The record shows that the initial protest by H & S to the contracting officer concerning Piland's allegedly late and unsealed bid was denied by letter of January 23, 1975. The protester was also advised that an award would be made to Piland; however H & S did not file its protest with this Office until March 13, 1975.

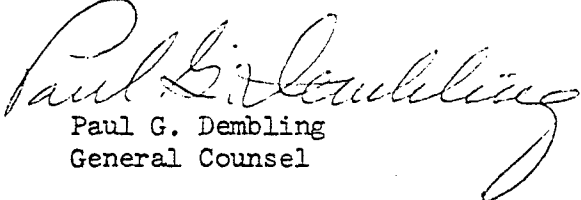
Our Interim Bid Protest Procedures then in effect, 4 Code of Federal Regulations (CFR) § 20.2(a) (1974 ed.), provided in pertinent part that "if a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 5 days of notification of adverse agency action will be considered provided the initial protest was made timely."

B-183500

While the protest to this Office was delayed for more than a month and a half after receipt by H & S of the contracting officer's initial adverse action in the matter, the protester argues that the delay is due to its efforts in contacting other bidders present, at bid opening in order to solicit their opinions as to whether Piland's bid was actually late. H & S states that it waited until it received written replies from these parties before pursuing the protest further.

In this connection, the record indicates that on February 5, 1975, H & S submitted to the contracting officer the written statements of three other bidders to the effect that Piland's bid was late. While such efforts were apparently made in an effort to corroborate the protest, nevertheless we believe the filing with this Office should not have been delayed. It would have been appropriate for H & S to obtain the statements of other bidders after the protest was filed with this Office. Furthermore, once the protester obtained the corroboration of others attending the bid opening, it chose to reopen the matter with the procuring activity rather than protest to this Office.

In the circumstances we think the protest should be dismissed as untimely filed.


Paul G. Dembling
General Counsel